

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 487 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARUNBHAI NILAKANTHRAI NANAVATI

Versus

DAHYABHAI UKABHAI KACHA

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Appearance:

MR MT KIKANI for Petitioner

MR MJ BUDDHBHATTI for Respondent No. 1

MR SA PANDYA, APP for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/02/99

ORAL JUDGEMENT

This revision preferred by the petitioner-original accused is directed against the judgment and order passed by the J.M.F.C., Balasinor below exh.5 in Criminal Case No.546 of 1997. The J.M.F.C. has issued process against the petitioner-accused for the offence punishable under sec.138 of the Negotiable

Instruments Act, 1881 with respect to a cheque issued by the petitioner-accused to respondent No.1-original complainant and which was dishonoured as the petitioner-accused had closed the account. The impugned order under challenge has been passed below application exh.5 preferred by the petitioner-accused praying for discharge from Criminal Case No.546 of 1997 pending in the Court of J.M.F.C., Balasinor.

2. I have heard the learned counsel for the respective parties.

3. The contentions raised by the learned counsel for the petitioner are such that which requires to be dealt at the time of trial. The above question is a mixed question of facts and law and, therefore, it cannot be decided at this stage without giving the opportunity to the party in question. Therefore, I am of the opinion that the above contentions can well be appreciated and dealt with in accordance with law only after recording the evidence at the time of trial. The petitioner-accused is at liberty to raise all the contentions which have been taken up in the memo of petition at the time of trial and the same can be properly appreciated on the basis of evidence which will be recorded during trial. In view of this, there is no reason at this stage to interfere with the order passed by the Court below.

4. Hence, this Criminal Revision Application is required to be dismissed with no order as to costs. Rule discharged. Interim relief granted earlier is hereby vacated.

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